

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 9

AMERICAN POSTAL WORKERS  
UNION, GREATER CINCINNATI OHIO  
AREA LOCAL 164, AFL-CIO (APWU)

and

JOCEYLYN HARGRAVE, AND  
INDIVIDUAL

**CASE No. 09-CB-245613**

**Respondent's Post Hearing Brief**

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This matter came on for hearing before Administrative Law Judge Arthur Amchan, remotely on Thursday, August 13, 2020, via Zoom meeting.

**I. Statement of the Case**

The General Counsel alleges that since March 29, 2019, the Respondent, Local 164 (the Union), failed to file and process a grievance concerning the Postal Service's action of removing Joceylyn Hargrave's from a light duty assignment . The General Counsel alleges that Local 164 failed to represent Ms. Hargrave for reasons which were arbitrary, discriminatory, or taken in bad faith in violation of the Act.

The Union contends that Ms. Hargrave never requested the Union to file such a grievance on her behalf, contends that the Union never told Ms. Hargrave that it would file such a grievance; nor represented to her that it had filed such a grievance. The Union contends that under the facts and circumstances of the case the Union's actions were not

arbitrary, discriminatory or taken in bad faith.

The Union contends that at best, the failure to file and process the grievance, as alleged, constitutes mere negligence, poor judgment, or ineptitude in grievance handling which are insufficient to establish a breach of the duty of fair representation, under established U.S. Supreme Court and Board precedent.

The Union also contends that under the terms of the collective bargaining agreement Hargrave could have filed her grievance on her own without Union involvement.

## **II. Essential Facts**

Ms. Hargrave testified that she began her most recent employment with the Postal Service in June, 2018, as a part time employee at the Sharonville, Ohio facility. About a month later, in July, 2018, she was transferred to the Main Post office, known as the Dalton Street facility, in Cincinnati, Ohio.

### **A. Hargrave Attempts To Be Scheduled For Light Duty**

Ms. Hargrave testified what while at work on September 16, 2018, she experienced pain in her ankles, and reported this to her supervisor. Her supervisor told her to go back to work. Ms. Hargrave stated that she sought medical attention for her condition at an emergency room and obtained a physician's statement. However, she contends that supervision would not release her from her work duties. Ms. Hargrave states that again on October 22, 2018, she obtained a doctor's statement that she could only work with restrictions, but that supervision would not assign her light duty work. There is no evidence that during this time period Ms. Hargrave sought the assistance of the Union concerning her light duty request.

B. Hargrave is disciplined and files a grievance

During the course of her ongoing dispute with supervision over a light duty assignment, on October 26, 2018, Hargrave was sent home for disciplinary reasons. On November 9, 2018 the Union filed a first step grievance concerning her discipline. (Respondent Exhibit 1).

C. Hargrave is disciplined again and files another grievance

On November 9, 2018, Hargrave was issued notice of a seven day suspension. On November 24, 2018, the Union filed a first step grievance concerning her suspension (Respondent Exhibit 2)

D. Hargrave is ultimately awarded a light duty assignment.

Ms. Hargrave testified that ultimately she was awarded a light duty assignment, sorting mail on November 11, 2018. She continued to work in that position, and became a full-time employee on January 5, 2019. She appears to have worked in that position, without incident, until February 16, 2019, when she was once again issued further discipline by the Postal Service.

E. Hargrave is disciplined a third time and files a third grievance.

On February 16, 2019, Hargrave was issued a notice of a 14 days disciplinary suspension. The Union filed a grievance over this suspension on March 7, 2019.

F. Hargrave is relieved of her light duty assignment

On March 29, 2019, Hargrave was called into the Union office at the Dalton

Street facility by supervisors Mustafa Sene and Lola Wizard. Also present was Union steward Art Saturday. Supervisor told Hargrave that she must clock out, and that management was referring her to the Postal Service reasonable accommodation committee (DRAC). She was informed that management would be giving her a call. (Hargrave T. P.27)

Ms. Hargrave stated that she had an on the job injury. She testified that Ms. Wizard stated that management did not have any paperwork relating to an on the job injury. Hargrave asked Wizard that if she would provide paperwork stating that she had an on the job injury if she could return to work. According to Hargrave , supervisor Wizard told her to bring in the paperwork on Monday.

After Mr. Sene and Ms. Wizard left the room. Hargrave continued to have a discussion with Union Steward Art Saturday. Hargrave contends that in this meeting Saturday told her that if she returned her paperwork and Monday and was not given her job back that he would file a grievance on her behalf.

Saturday denies that he told Hargrave that he would file a grievance on her behalf if she was not returned to work. He also denied that Hargrave asked him to file a grievance over her removal from light duty. He stated that he instructed her to resubmit a light duty request to the plant manager. He stated that she should also submit any medical documentation that she had. (Saturday, T. p. 130-131).

G. Hargrave's request to be returned to light duty is denied

Hargrave testified that she returned to the Dalton Street facility on April 1, 2019, with medical documentation to be returned to light duty. However, supervisor Wizard was off

work that day. She testified that no one else in management knew anything about her situation and she was not permitted to return to light duty work.

Hargrave states that immediately after being denied light duty work she met with Art Saturday. He states that he told her if she was not returned to light duty when Ms. Wizard returned to work, he would file a grievance. Hargrave states that she left her medical paperwork with Saturday.

Saturday denies that Hargrave gave him any medical paperwork (Saturday, T.p.150). Saturday also denies that he ever represented to Hargrave that he was pursuing any grievances concerning her removal from light duty work. (Saturday, T. p. 139).

#### H. Hargrave receives notice of her meeting with the DRAC committee

Shortly after being sent home on March 29, 2019, Hargrave received a notice from the Postal Service dated April 3, 2019, concerning forms which need to be completed in connection with a request for reasonable accommodation for medical reasons (Respondent Exhibit 9, page 5). On April 18, 2019, Hargrave was sent a notice that her meeting with the DRAC committee was scheduled for April 23, 2019 (Respondent Exhibit 9, page 7).

Hargrave testified that she met with the DRAC committee on April 23, 2019. She conceded that she never sought the Union's assistance either in connection with representing her at the DRAC meeting, or in helping her to prepare for the DRAC meeting.

#### I. Hargrave meets with Union president Mike Smith

On May 29, 2019, Hargrave met with Union president Mike Smith at the Union's

office. It appears that the primary purpose of the visit to find out if the Union could offer her some financial aid because a tornado had damaged her residence. Smith offered her some supplies from the Union office.

Hargrave contends that during this meeting she asked Smith what was going on with the process of her grievances (Hargrave, T. p. 36). The Union would note that at this time there were 3 outstanding grievances concerning discipline which had been imposed on Hargrave.

She contends that Smith called Art Saturday on the telephone. However she could not hear Saturday's side of the conversation. She did hear Smith request Saturday to send her paperwork regarding the Union relief fund.

Smith's recollection of the meeting was that it primarily was about financial relief. He also recalled talking to her about her discipline grievances and a grievance over her annual leave not being properly credited.(Respondent Exhibit 5). (Smith, T. p.172-174)

Smith does not recall any conversation with Hargrave regarding a grievance concerning her being removed from light duty. (Smith, T. p. 174). While Smith does not have a specific recollection of calling Art Saturday on the telephone; he does not deny it and stated that he probably did, since that was his normal practice.

J. Hargrave exchanges text messages with Saturday over Union relief

After her May 29, 2019, meeting with Mike Smith, Hargrave exchanged text messages with Art Saturday regarding paperwork for the Union relief fund on June 3, 2019, and June 5, 2019 (Respondent Exhibit 9).

The Union would note that although she was texting with Saturday she made no

mention of a grievance concerning her removal from light duty.

K. Hargrave attends a pre disciplinary investigation at Dalton Street

On June 23, 2019, Hargrave met with supervisor Lisa McKlinsky and Union steward Richard Leigh. Hargrave testified that this meeting was concerning her attendance because she had been out for a while.

After the meeting with McKlinsky was over Hargrave went to the Union office with Leigh because she wanted to see her “grievance papers” (Hargrave, T. p. 39).

Leigh was unable to locate any grievance information concerning Hargrave so he instructed Hargrave to put her grievance in writing. (G.C. Exhibit 2).

The Union would note that the issues that Hargrave reduced to writing were improper crediting of her annual leave, and her claim that she was not paid for her work on March 29, 2019. Nothing contained in the June, 2019, written grievance related to her being improperly removed from her limited duty position.

L. Union files grievance over Postal Service failure to give Hargrave an answer concerning the DRAC committee hearing in April, 2019

Sometime in July, 2019, Hargrave contacted Art Saturday regarding the failure of the Postal Service to give her any answer regarding the DRAC committee hearing in April, 2019. On July 17, 2019, Saturday filed a first step grievance over this issue. (Respondent Exhibit 4).

M. Hargrave files initial Unfair Labor Practice Charge

On July 29, 2019, Hargrave filed her initial Unfair Labor practice charge against the Union. The charge was subsequently amended on August 5, 2019.

N. Despite filing an unfair labor practice charge Hargrave continues to communicate with Art Saturday

Although having filed an unfair labor practice charge on July 29, 2019, two days later on July 31, 2019, Hargrave exchanged a series of text message with Art Saturday regarding her removal from light duty on March 29, 2019, and the failure of the Postal Service to give her a response to the DRAC committee findings. (Respondent Exhibit 9)

In this text message exchange Hargrave sent Saturday documentation regarding her medical forms and copies of notices regarding her DRAC committee meeting in April, 2019.

In addition, Hargrave gave her account of the events of March 29, 2019, when she was relieved from light duty work. The Union would note that in this account by Hargrave there is no mention of filing a grievance or any mention that the Union would file a grievance on her behalf.

Hargrave testified that her July 31, 2019, text to Saturday provided him with the same paperwork she claims to have given him on April 1, 2019. The Union would note that Ms. Hargrave's testimony on this point is inaccurate sine the medical paperwork attached to the text messages is dated April 12, 2019, and marked received by the Postal Service on April 15, 2019, several weeks after she claims to have given them to Mr. Saturday. (Respondent Exhibit 9, pages 4 and 5).

O. The Union settles numerous Hargrave grievances

On November 7, 2019 the Union entered into a settlement of Hargrave's annual leave grievance (Respondent Exhibit 5). It was determined that she did not have any annual leave remaining.



On December 12, 2019, the Union entered into a settlement of Hargrave's grievance over not receiving an answer from the DRAC committee.(Respondent Exhibit 5). It was determined that Hargrave would resubmit her DRAC request and that the Postal Service would respond in a timely manner. Hargrave testified that she was given a new DRAC hearing, and she received a timely response from the Postal Service. Hargrave testified that her DRAC request was denied. On February 14, 2020, the Union entered into a settlement of three discipline grievances filed by Hargrave (Respondent Exhibits 1, 2 and 3). Hargrave's 14 day suspension was essentially eliminated and she received a pay back settlement of \$1,120.00

### III. ISSUE PRESENTED FOR REVIEW

**WHETHER THE UNION BREACH ITS DUTY OF FAIR REPRESENTATION OWED TO Ms. HARGRAVE, IN VIOLATION OF THE ACT, IN CONNECTION WITH HER MARCH 29, 2019 REMOVAL FROM LIGHT DUTY ASSIGNMENT BY THE POSTAL SERVICE?**

### IV. DISCUSSION OF THE ISSUE

#### A. Legal Standard To Be Applied

It is well established that, as the exclusive bargaining representative of employees, the Union has a statutory duty to fairly represent all employee, both in it collective bargaining and in its enforcement of the collective bargaining agreement. *Vaca v. Sipes*, 386 U.S. 171 (1967).

"Under this doctrine, the exclusive agent's statutory authority to represent all members of a designated unit includes a statutory obligation to serve the interests of all members without hostility, or discrimination toward any, and to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct" *Vaca*, 386 U.S. at 177.

However, it is long standing Board precedent that mere negligence, poor judgment, or ineptitude in grievance handling are insufficient to establish a breach of the duty of fair representation. *San Francisco Web Pressman and Platemakers Union No. 4*, 249 NLRB 88.

This view that mere negligence in the enforcement of a collective bargaining agreement does not state a claim for breach of the duty of fair representation has been endorsed by the United States Supreme Court in *United Steelworkers v. Rawson*, 495 U.S. 362 (1990).

The Rawson court stated:

This duty of fair representation is of major importance, but breach occurs only when a union's conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith. The courts have in general assumed that mere negligence, even in the enforcement of a collective bargaining agreement, would not state a claim for breach of the duty of fair representation, and we endorse that view today. 495 U.S. at 372-373.

- B. The Union's conduct in connection with Hargrave's removal from her light duty assignment was not arbitrary, discriminatory, or taken in bad faith

The essential fact in dispute in this case is whether Union steward Art Saturday told Hargrave that he would file a grievance on her behalf concerning her removal from a light duty assignment on March 29, 2019.

Saturday denies that he told Hargrave he would file a grievance over her removal. In the context of all the facts of this case, Saturday's denial is credible. At the time of the March 29, 2019, incident, the Union had already filed and processed three grievances on behalf of Hargrave concerning discipline imposed by the Postal Service. (Respondent Exhibits 1, 2 and 3). Subsequently, the Union filed and processed a grievance on her behalf concerning

her annual leave complaint (Respondent Exhibit 5); and Saturday, at Hargrave's request, filed another grievance concerning the failure of the Postal Service to advise Hargrave of the results of the April, 2019, DRAC committee meeting. (Respondent Exhibit 4).

At the hearing it was undisputed that Hargrave was not active in internal Union politics and had never run for Union office. (Hargrave, T. p.12) Hargrave testified that during the processing of her grievance, she did not believe or experience any sort of hostility or animosity or bad faith towards her by Union representatives. She also testified that she had no reason to believe that union officers or stewards would have any particular thing against her or would want to harm her. (Hargrave T.p. 66)

Saturday testified that prior to March 29, 2019, he had no interactions with Hargrave, that they had no personal disputes, and that he had no reason to want to harm Hargrave (Saturday, T. p. 142).

Saturday testified that it was his belief that being removed from light duty was not a grievable offense. (Saturday, T. p. 152). Without regard to the correctness of this opinion, it is highly unlikely that he would have told Hargrave that he would file a grievance over her being removed if he didn't believe that it was grievable.

Under all the facts of this case it stains credibility that Saturday would have told Hargrave that he was going to file a grievance over her removal from light duty and then intentionally failed to do so.

While it may be that Hargrave was under the mistaken impression that Saturday was going to file a grievance over her removal from light duty, the record suggests that this was a product of her failure to adequately communicate with Saturday and other Union officials.

When asked what provision of the collective bargaining agreement she believed was

violated by her removal from light duty she testified that she didn't know. (Hargrave, T. p. 62). It is instructive that after she claims Saturday stated he would file a grievance on her behalf, she did not contact Saturday to verify that a grievance had been filed; or to ascertain the status of her grievance.

Hargrave's next contact with the Union was about 2 months after she had been removed from her position when she met with Union President Smith in May, 2019. At that meeting she brought up an issue concerning annual leave; but did not specifically question Smith about the status of her grievance concerning being removed from light duty. At that time she also had 3 disciplinary grievances pending. Her general inquiry about what was happening to her "grievances" was too vague to put the Union on notice that she believed at a grievance over her removal from light duty had been filed.

Again, about a month later, in June, 2019, she spoke with Union Steward Leigh about the status of her grievances, Since Leigh could not find paperwork, he requested her to reduce her grievance to writing. Again, Hargrave failed to make any mention of her being removed from light duty; but rather grieved her annual leave and her claim for pay on March 29, 2019. (G.C. Exhibit 2).

In late July, 2019, after Hargrave filed her initial unfair labor practice charge, she continued to communicate with Saturday, via text, concerning her complaint that the DRAC committee had not given her an answer, although the meeting was held in April, 2019. At no time during these exchanges did she ever request information about or the status of any grievance concerning her removal from light duty, which she believed the Union had filed.

Saturday testified numerous times that Hargrave never requested him to file a grievance over her removal from light duty. Saturday testified that he counseled Hargrave

to reapply for light duty and gave her instructions how to do so. It is unclear whether Hargrave ever reapplied for light duty.

It is undisputed that Hargrave never requested Union assistance in connection with her DRAC committee meeting in April, 2019. It was only in July, 2019, when she had not gotten a response did she contact Saturday about the delay. Saturday filed a grievance.

It is clear from the record that during the course of the Union's interaction with Hargrave no Union action was taken that was hostile or discriminatory. In fact, the record clearly demonstrates that on numerous occasions the Union repeatedly assisted Hargrave.

It is the Union's position that on numerous occasions when she had the opportunity to advise the Union of her belief that a grievance had been filed over her removal from light duty she failed to do so.

Although the Union disputes that it should have known that Hargrave wanted a grievance filed over her removal from light duty, despite the lack of a specific request, the failure to do so would not be a violation of its duty of fair representation, under the Act.

At best, its failure to file a grievance under these circumstances would be "mere negligence, poor judgment, or ineptitude in grievance handling" which is insufficient to establish a breach of the duty of fair representation. (See *San Francisco Web Pressmen*, previously cited).

Ms. Hargrave could have initiated the grievance procedure on her own without Union involvement. Article 15.2 of the National Collective Bargaining Agreement (Joint Exhibit 1) states in part:

(a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the

Union first learned or may reasonably have been expected to have learned of its cause. The Employee, if he or she so desires, may be accompanied and represented by the employee's steward or Union representative.

Thus the alleged failure of Saturday to file Hargrave's grievance would not have contractually precluded Hargrave from filing the grievance on her own,

Respectfully submitted

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Post Hearing Brief of Respondent, American Postal Workers Union Greater Cincinnati Ohio Area Local 164, AFL-CIO (APWU) was filed electronically using the Agency's website.

The following interested parties were served with a copy of the Answer of Respondent, American Postal Workers Union Greater Cincinnati Ohio Area Local 164, AFL-CIO (APWU) by U.S. mail:

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